Case and Comment.

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS.
INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED.
LEGAL NEWS NOTES AND FACETIÆ.

VOL. 3. NOVEMBER, 1896. NO. 6.

CASE AND COMMENT.

Monthly. Subscription, 50 cents per annum postpaid. Single numbers, 5 cents.

THE LAWYERS' CO-OPERATIVE PUB. CO.,
Rochester, N. Y.

Branch Offices: { New York, 177 Broadway. Chicago, Rand-McNally Bldg. Boston, 10 Tremont Street.

Entered at postoffice at Rochester, N. Y., as second-class mail matter.

Stephen K. Williams.

The edition of the reports of the Supreme Court of the United States usually known as "Law ed.," which is published by the Lawyers' Co-Operative Publishing Company, has been largely the work of Stephen K. Williams. In 1882, when he was engaged to commence his work on this new edition of those reports, the original edition was expensive, its ownership divided between different publishers, and some parts of it hard to get. The consequence was that few lawyers owned these reports. The Lawyers' edition revolutionized these conditions by bringing down the price and vastly increasing the sales and the use of this series of reports.

Volumes 1 to 57 of these reports were reprinted from the original edition, the copyright having expired, but the notes to the leading cases in those volumes, as well as in subsequent ones, were by Mr. Williams. Beginning with volume 58, entirely new reports were made from the original records of the court. Excepting volumes 114–122 (books 29, 30), his work as editor of these reports has been continuous. In some parts of it he has necessarily availed himself of assistants, yet a great share of the work has been done by himself. Few men have reported so many cases in any series of reports.

Mr. Williams resides at Newark, New York, where he has been a successful lawyer, well-known in the highest courts of the state. He was Senator of that state for six years (three successive terms) from 1863 to 1869. Previous to that he was district attorney of his county for three years. He was a delegate to the National Convention at Baltimore which nominated Abraham Lincoln for his second term. He was also president of the Sodus Point & Southern Railroad Company, while its road was being built, in the years 1870 to 1873.

Mr. Williams was born at Bennington, Vermont. He graduated at Union College, New York, at the age of eighteen, having entered the Sophomore class at the age of fifteen; and on his graduation was elected by that institution a member of the Phi Beta Kappa Society, and selected to deliver an oration on commencement day. He has since received from Union college the degree of LL. D., and was elected in 1892 a trustee of that college.

In reporting the decisions of the Supreme Court of the United States, Mr. Williams has done his work with fidelity and ability and with full appreciation of the importance of the work.

How Cases are Decided.

The way cases are considered and disposed of by the Supreme Court of the United States was described by Mr. Justice Brewer in the course of his response to a toast at a banquet given by the Bar of the Sixth Federal Circuit at Cincinnati, October 3, 1896. On this point he said:

"In my intercourse with the members of the bar I have found to my great surprise that the impression prevails with some that cases, after being submitted, are divided among the judges, and that the court bases its judgment

in each one wholly upon the report made by some one judge to whom that case has been assigned for examination and report. I have met with lawyers who actually believed that the opinion was written before the case was decided in conference, and that the only member of the court who fully examined the record and briefs was the one who prepared the opinion.

"It is my duty to say that the business in our court is not conducted in any such mode. Each justice is furnished with a printed copy of the record, and with a copy of each brief filed, and each one examines the records and briefs at his chambers before the case is taken up for consideration. The cases are thoroughly discussed in conference — the discussion in some being necessarily more extended than in others. The discussion being concluded,— and it is never concluded until each member of the court has said all that he desires to say,—the roll is called, and each justice present and participating in the decision votes to affirm, reverse, or modify, as his examination and reflection suggest. The chief justice, after the conference, and without consulting his brethren, distributes the cases so decided for opinions. No justice knows, at the time he votes in a particular case, that he will be asked to become the organ of the court in that case; nor does any member of the court ask that a particular case be assigned to him.

"The next step is the preparation of the opinion by the justice to whom it has been assigned. The opinion, when prepared, is privately printed, and a copy placed in the hands of each member of the court for examination and criticism. It is examined by each justice, and returned to the author, with such criticisms and objections as are deemed necessary. If these objections are of a serious kind, affecting the general trend of the opinion, the writer calls the attention of the justices to them, that they may be passed upon. The author adopts such suggestions of mere form as meet his views. If objections are made to which the writer does not agree, they are considered in conference, and are sustained or overruled as the majority may determine. The opinion is reprinted so as to express the final conclusions of the court, and is then filed.

"Thus, you will observe, not only is the utmost care taken to make the opinion express the view of the court, but that the final judgment rests, in every case decided, upon the examination by each member of the court of the record and briefs. Let me say that, during my entire service in the Supreme Court, I have not known a single instance in which the court has determined a case merely upon the report of one or more justices as to what was contained in the record and as to what questions were properly presented by it. When you find an opinion of the court on file, and published, the profession have the right to take it as expressing the deliberate views of the court, based upon a careful examination of the records and briefs by each justice participating in the judgment."

Exaggerated Dangers.

The bogey of socialism is frightening many people. Some see the specter at every step of progress. They are alarmed at any new measure, even when it is the logical development of old principles. If they feel a foggy dislike of any proposition against which they can have no sound reason, they assail it as socialistic. Even free text-books for needy pupils in public schools were denounced as socialism by a late newspaper editorial. So tight-fisted taxpayers used to clamor against free schools. Such people, when they are honest in their theories and not merely stingy, are like the Chinese in slavishly copying the past. In their thought, the spirit of progress, which in past times has lifted the world out of barbarism, has now become petrified. They fear any signs of life and growth in the social organism, not because they deem the present condition perfect, but because they have no healthy human faith in the future.

Most of the propositions called socialistic involve no new principles of government, but only debatable questions of policy. Thus, the decision as to governmental control of railroads or telegraphs or any other public agency should be made according to wise practical consideration of the advantages and disadvantages, unvexed by the fear of socialism. This would be the same kind of socialism that now exists in our postoffice department.

The danger from socialism in the United States would not be worth even a passing thought if there were not so many of the ignorant and discontented. To enlighten the ignorant and to remove the causes of discontent will destroy any such danger. But much that passes by the name of socialism with many persons is surely becoming a part of our civi-

lization. Those born out of due time, who fear the education of all citizens, and who would gladly perpetuate a substratum of the ignorant whom they can dominate and by whom they can measure their own superiority, are destined to grieve still further over the growth of a socialism which more fully equalizes the privileges as well as the rights of men.

A socialism which would destroy personal freedom, independence, and responsibility will find little favor among independent Americans. But, call it socialism or not, the self-government of a free and enlightened people will steadily advance in promoting the common interest, in fitting the young for citizenship, in helping the unfortunate, and in demonstrating more fully that "civilization," in the words of Lord Russell of Killowen, "is not a veneer."

On the other hand, the danger of plutocracy has upset the equilibrium of some good people. Sensational harangues, too lurid for sanity, have been published by men whose previous writings were respectable. A believer in the existence of an organized conspiracy of plutocrats dominating nations and causing wars in order to get borrowers of their money, especially one who finds the origin of our late Civil War in such a conspiracy, may not yet need a padded cell, but his mental derangement has begun.

One phase of the cry against plutocracy is the oft-heard claim that the rich are getting richer and the poor poorer. Like many another cry, recklessly made and ignorantly believed, this we believe to be utterly false. Hardships still exist; wrongs are not unknown; poverty is too prevalent; but we believe the average comfort of the people of the United States has steadily increased and is greater today than ever before. That such is the case in England is shown by Mr. Mallock's recent book called "Classes and Masses." He shows that the poor people in England, among which he includes those having an income of less than $750 per year, were in 1860 better off than the same class would have been in 1800 if all the wealth of the kingdom existing at that time had been evenly distributed. A like gain was made twice as fast between 1850 and 1880, as in 1880 this class was better off than it would have been in 1850 if the nation's wealth had then been thus distributed. The remarkable rise in the average condition of the people is shown in another way also. The increase in thirty years of those having an income of less than $750 was only 15 per cent, while during the same period the increase of the middle class having incomes between $750 and $5,000 was 300 per cent. Without knowing what the statistics for the United States might show, we believe they would show even more improvement in the condition of the people than has been made in England. In the United States conditions have changed much in a generation or two. The increase of wealth has been enormous. Millionaires have multiplied. But persons worth $1,000, $2,000, or $10,000 each have multiplied a great many times faster than the millionaires. The scale of living has wonderfully improved. The ordinary wage-earner now lives in more comfort, with better clothes, better food, and more small luxuries than did the people called quite well-to-do a generation ago. Misstatements will not remedy evils, and those who assert that the poor of this country are getting poorer must prove it, not by showing that poverty still exists, but by showing its increase.

Real evils exist and need correction. But all that is genuine in proposed reforms can be won peacefully and righteously if their advocates will avoid extravagance, passion, suspicion, and injustice. There is no reason to fear failure if they work with fair temper, sound judgment, clear perception of the facts, and faith in their fellowmen. A multitude of allies are ready for anyone who plainly shows a just remedy for an evil, but they are not at the call of every self-constituted prophet. To make the paths plain will do much toward triumph over any national evil. When the leaders of any reform are untouched by the vanity of prominence, untempted by the eloquence of denunciation, persuasive rather than abusive, and fairminded as well as earnest, there is hope for their cause.

An "Official" Digest.

Vigorous demands have been made from time to time for a current Digest of the official reports. Both the General and the American Digests have been made in large part from unofficial reports. But as courts and attorneys prefer to cite the official reports when possible, attempts have been made, by supplemental tables and otherwise, to furnish the official citations when the cases digested are officially reported after the Digest is printed. Yet these supplemental references satisfy no one. The only satisfactory place for citing the official

report of a case digested is with the digest proposition itself.

The want is supplied in the General Digest Vol. 1, New Series, which gives in the proper place official citations for all cases except those which are not to be officially reported. It becomes now a digest of the official reports, entirely complete, for permanent use. A supplement to this volume, intended for temporary use, gives all cases not yet officially reported. These will appear again in the permanent official digest when they are officially reported.

To give all decisions promptly, whether reported officially or unofficially, they will be included in advance parts of the General Digest. To make the use of these advance parts as convenient and rapid as possible, and avoid the trouble of looking through too many pamphlets, they will be published, not as semi-monthlies, but as quarterlies. Any cases in the quarterly which are not officially reported in time for the following bound volume will be carried over into subsequent quarterlies, so that it will never be necessary to examine the quarterlies for more than a single year.

The permanent volumes now become semi-annual. This is required by the increase of decisions and of the size of the volumes. Since the first Annual of the series, the number of cases digested as well as the number of courts from which they are taken has more than doubled. The scope of the work has been enlarged by including the decisions of English and Canadian courts and intermediate state courts; but much of the increase is due to the creation of new and important courts, such as the appellate courts of Indiana, Kansas, and Colorado, the superior court of Pennsylvania, the court of appeals of the District of Columbia, and the Federal circuit courts of appeals, and many others.

Those who want a Digest of reasonable size, convenient form, and clear print, which is complete on every page for permanent use, without supplemental tables or other such nuisance, will welcome this improvement of the General Digest.

Any expression here of the quality and rank of the General Digest might be thought partial; but we may quote the editorial judgment of the American Law Review that the makers of this Digest "have developed the art of making digests to a perfection not hitherto achieved in this country."

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 32, Parts 5 and 6.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

Stephen K. Williams

LL. D., EDITOR LAW ED. U. S. SUP. CT. REPORTS.

ORTRAIT SUPPLEMENT.—"CASE AND COMMENT."
THE LAWYERS CO-OPERATIVE PUBLISHING CO.,
ROCHESTER, N. Y.

NEW YORK: 177 BROADWAY. BOSTON: 10 TREMONT ST. CHICAGO: RAND-MCNALLY BLDG.

The part containing any note indexed will be sent with Case and Comment for one year for $1.

Among the New Decisions.

Appeal.

A statute requiring all cases on appeal to be tried anew in the supreme court is held, in Christensen *v.* Farmers' Warehouse Association (N. D.) 32 L. R. A. 730, to require the exercise of appellate functions only, and therefore is not regarded as a violation of the constitutional provision conferring appellate jurisdiction only on that court.

An appeal from a decision entered in exact accordance with the mandate of the appellate court upon a previous appeal is held, in Krantz *v.* Rio Grande Western R. Co. (Utah) 32 L. R. A. 828, to be bad; and such an appeal is dismissed with costs upon motion.

Arson.

Setting fire to one's own dwelling house is held, in State *v.* Sarvis (S. C.) 32 L. R. A. 647, not to be arson either at common law or under a statute making it arson to set fire to "any house," even when the property is insured.

Banks.

A stipulation stamped on the face of a check, that it will not be paid if presented through a specified agency, is held, in Commercial Nat. Bank *v.* First Nat. Bank (N. C.) 32 L. R. A. 712, to be sustainable so as to prevent any right of action on the check by the prohibited agency.

The fraud of a bank in receiving a note for collection when insolvent is held, in Sayles *v.* Cox (Tenn.) 32 L. R. A. 715, insufficient to alter the rule that collections made under direction to remit "by draft" will not be impressed with a trust which will give a preferential claim against the bank's assets.

The theft by a cashier of securities held by a bank as a special deposit was held, in Gray *v.* Merriam (Ill.) 32 L. R. A. 769, to make the bank liable if it had permitted him to have access to them after he was known to be speculating on the board of trade, and accepted his statement that he was using his own money, without knowledge that he had anything except his salary.

The similar case of Merchants' Nat. Bank *v.* Carhart (Ga.) 32 L. R. A. 775, held the bank liable for such theft by a cashier where the bank did not show that it had exercised proper supervision of him without discovering any indications of dishonesty or any reasons for distrusting him.

A drawee bank which pays a draft relying on a forged indorsement thereon of the name of a fictitious person to whom the payee indorsed it innocently as the result of a fraud practiced upon him is held, in Chism, C. & Co. *v.* First Nat. Bank (Tenn.) 32 L. R. A. 778, to be liable to the payee.

Bicycles.

The right of a bicycle rider to pass on the right-hand side in meeting a truck which is turning toward that side to the curb of the street is held, in Peltier *v.* Bradley, D. & C. Co. (Conn.) 32 L. R. A. 651, to be not absolute, and he is held not to have the right to assume that the driver must turn out for him, but is bound to exercise the same degree of care which is required of the driver in order to avoid a collision.

Boundaries.

A statutory dedication of land for a street by a plat filed under the Missouri statute de-

claring that it shall vest the fee for public use, is held, in Thomas *v.* Hunt (Mo.) 32 L. R. A. 857, to give the public only an easement, and — at least where the dedicator owns the land on both sides of the strip — to vest the fee in the abutting owners respectively to the center of the street when they subsequently acquire title to lands abutting thereon.

Carriers.

The murder of a passenger when asleep in a sleeping car, by some intruder, stranger, or fellow passenger, is held, in Ball *v.* Chesapeake & O. R. Co. (Va.) 32 L. R. A. 792, insufficient to render the carrier liable if there was nothing to indicate to it or its employees any impending danger or to arouse their suspicions.

Constitutional Law.

A statute making it unlawful for barbers to do business on Sunday, without applying to other classes of business, is held, in Eden *v.* People (Ill.) 32 L. R. A. 659, and *Ex parte* Jentzsch (Cal.) 32 L. R. A. 664, contrary to the New York decision in People *v.* Havenor, 31 L. R. A. 689, to be unconstitutional.

Possession of opium without having a license therefor, or without having obtained it on the prescription of a physician or pharmacist for medicinal purposes, is held, in Mon Luck *v.* Sears (Or.) 32 L. R. A. 738, to be within the power of the legislature to prohibit as a criminal offense.

A statute requiring emery wheels to be provided with blowers to carry away the dust arising from their operation is held, in People *v.* Smith (Mich.) 32 L. R. A. 853, to be a constitutional exercise of the police power, at least so far as it applies to dry wheels and to the protection of persons continuously employed over them.

County-Seat Election.

The validity of an election to relocate a county-seat is held, in State *v.* Langlie (N. D.) 32 L. R. A. 723, to be properly determined in a mandamus proceeding; but the sufficiency of a petition for an election is held to be no longer subject to question after it has been acted upon and the election held and a sufficient vote cast in favor of a relocation.

Damages.

Injury to feelings and affections alone is held, in Morton *v.* Western Union Teleg. Co. (Ohio) 32 L. R. A. 735, insufficient to sustain an action for damages for negligent failure of a telegraph company to deliver a message.

Drains and Sewers.

Contribution to the expense of a sewer as a condition of the right to use it is imposed in Herrmann *v.* State, Cooper (Ohio) 32 L. R. A. 734, where one who desired to use it had successfully resisted an assessment for the sewer while others had paid assessments.

Electrical Uses.

In case of a patrolman killed by contact with an electric light wire, it was held, in Suburban Elec. Co. *v.* Nugent (N. J.) 32 L. R. A. 700, that the mere fact of such contact did not raise a presumption of his negligence which would justify a nonsuit in an action against the electric company for his death.

Fire Escapes.

Fire escapes on a leased building are held, in Schmalzried *v.* White (Tenn.) 32 L. R. A. 782, to be not required of the landlord, unless this is required by statute or ordinance.

Freedom of the Press.

A contract by the owner of a newspaper or other periodical, binding himself against editing or being connected with another journal in the same locality, is held, in Cowan *v.* Fairbrother (N. C.) 32 L. R. A. 829, to be valid and not to infringe the constitutional guaranty of the freedom of the press.

Gift.

A Christmas gift by check to an employee according to a habit of previous years, although made in forgetfulness of a recent increase in his salary, is held binding in Pickslay *v.* Starr (N. Y.) 32 L. R. A. 703, although the donor charged it to the employee's account a

few days later but did not give him notice of the fact for several months.

A gift made by bond of the donor with warrant of attorney to confess judgment is held, in *Re* Wagoner (Pa.) 32 L. R. A. 766, to be a valid gift to the custodian as trustee, when delivered to a third person to be given to the donee on the donor's death, where the donee is informed of the arrangement, although the bond is by mistake made to bear interest and this blunder is remedied by indorsing the interest thereon.

Guaranty.

A renewal after notice of the death of a guarantor, of paper discounted by a bank during his life, is held, in Gay *v.* Ward (Conn.) 32 L. R. A. 818, to constitute a payment so far as his estate is concerned, and to terminate his liability.

Highways.

A thin strip of ice 3 feet wide and 1¼ to 2 inches thick across a sidewalk, where it was formed by the discharge of water from a pipe which had been put up to take water from a sag in an eaves trough, is held, in Gavett *v.* Jackson (Mich.) 32 L. R. A. 861, insufficient to make the city liable.

Husband and Wife.

A grant to husband and wife, the words of which show an intent to create a tenancy in common, will give them an estate as cotenants, and not as tenants by the entirety. Fulper *v.* Fulper (N. J.) 32 L. R. A. 701.

Infants.

An admission by guardians of minors and their attorneys of record in a partition suit, that the property is community property, is held valid in Kromer *v.* Friday (Wash.) 32 L. R. A. 671, where that fact has been previously determined by a court having jurisdiction of the parties and subject-matter, and the decision is unappealed from.

Insurance.

Death from asphyxiation by illuminating gas while the insured was asleep is held, in Fidelity & C. Co. *v.* Waterman (Ill.) 32 L. R. A. 654, to be not covered by a clause excluding injuries from poison "or anything accidentally or otherwise taken, administered, absorbed, or inhaled."

Landlord and Tenant.

Reasonable care to have the common halls and stairways of a building in which apartments are leased fit for use for the passage of tenants is held, in Gleason *v.* Boehm (N. J.) 32 L. R. A. 645, not to include an obligation of the landlord to furnish lights at night, and he is therefore held not liable for injury to a visitor of a tenant who fell while trying to find the stairway in the dark.

Levy.

The interest of persons who contributed money to purchase lands conveyed to a trustee who has the absolute title and is a trustee for the purpose only of accounting for the proceeds of sales is held, in Chase *v.* York County Sav. Bank (Tex.) 32 L. R. A. 785, not to be such an interest that it can be levied upon under a writ of attachment.

License.

A license tax upon persons and corporations, imposed by the legislature, of which a portion is given to the county, is held, in State *v.* Camp Sing (Mont.) 32 L. R. A. 635, to be distinguishable from a tax within the meaning of the constitutional provision against the legislature levying taxes in any county, city, or town for county, town, or municipal purposes.

Markets.

The occupant of a stall in a market under a provision in town laws that his license may be revoked for any cause which the board may deem sufficient is held, in Hutchins *v.* Durham (N. C.) 32 L. R. A. 706, to be a mere licensee, and not a lessee; and after the expiration of his license he is not in the position of a tenant holding over, but may be expelled as a trespasser if he refuses to vacate.

Mortgage.

A lessor's mortgage of his interest in crops raised by a tenant on leased land and still in possession of the tenant and undivided is held, in Riddle v. Dow (Iowa) 32 L. R. A. 811, to give the mortgagee a right paramount to that of the mortgagor's creditors under garnishment proceedings subsequent to the mortgage.

Negligence.

The rule that one who collects on his own premises a substance liable to escape and cause mischief must use reasonable care to restrain it is applied in Defiance Water Co. v. Olinger (Ohio) 32 L. R. A. 736, to a large iron tank or standpipe containing water which stood within 50 yards of a dwelling house occupied by a servant of the owner of the tank; and the latter was held liable for injury to a guest of the tenant resulting from the bursting of the tank.

Injury to a child while playing on a pile of railroad bridge ties in the railroad yard, which is fenced except on the side along the railroad track, and out of which the servants of the company always ordered any children found there, was held, in Missouri, K. & T. R. Co. v. Edwards (Tex.) 32 L. R. A. 825, not to render the railroad company liable, as it was under no obligation to pile the ties so as to prevent injury by children climbing upon them.

The completion and acceptance of a contractor's work in reconstructing a building is held, in Daugherty v. Herzog (Ind.) 32 L. R. A. 837, to terminate his liability for negligence in the work, so far as to prevent any right of action against him by a third person subsequently injured.

Nuisance.

The recovery in a single action, of damages, both present and prospective, for failure to make a sufficient passageway for water through a railroad embankment, is held proper in Ridley v. Seaboard & R. R. Co. (N. C.) 32 L. R. A. 708, provided either party to the action demands that permanent damages be assessed.

Public Improvements.

Interest on a sewer assessment is held, in Sargent v. Tuttle (Conn.) 32 L. R. A. 822, to be recoverable only when the law so provides; and a municipal by-law is held insufficient to require it, unless the city has been given power to require it.

Recipes.

The recipes prepared by a color mixer for the use of his employers in the manufacture of their carpets are held, in Dempsey v. Dobson (Pa.) 32 L. R. A. 761, to belong to the employers, so far, at least, as to give them the right to the use of the various colors and shades produced by them; and where he entered them in a book of his own, instead of a book furnished him for that purpose, the employers have a right to some record or register of the recipes.

Seduction.

The effect of marriage with her seducer to extinguish the right of action for seduction given by an Indiana statute to any unmarried woman, is held, in Henneger v. Lomas (Ind.) 32 L. R. A. 848, to be destroyed and the right of action restored by a decree of nullity as distinguished from a divorce.

Subrogation.

One whose money is loaned by an agent who has an adverse interest in the loan because the proceeds are to be paid to him is held, in Dorrah v. Hill (Miss.) 32 L. R. A. 631, to be subrogated to the prior security which was paid for by his money, when the security taken by the agent on the loan thereof was invalid because not signed by the debtor's wife.

Taxes.

An exemption of the stock of a corporation from taxation is held, in State, Singer Mfg. Co. v. Heppenheimer (N. J.) 32 L. R. A. 643, to include the exemption of the company itself from a franchise tax.

A purchase at a tax sale by a devisee of a life estate in remainder is held, in Defreese v. Lake (Mich.) 32 L. R. A. 744, ineffectual to cut off the remainders limited upon such life estate.

A receiver to take charge of the premises and pay taxes and expenses of repairs is held

proper, in St. Paul Trust Co. *v.* Mintzer (Minn.) 32 L. R. A. 756, where a life tenant refuses to pay the taxes or make repairs, and the reversioners have been obliged to do so to save the estate from loss.

A delinquent-tax sale for failure of a life tenant to pay taxes is held, in Estabrook *v.* Royon (Ohio) 32 L. R. A. 805, to cause no forfeiture of his estate, where by reason of errors or irregularities a valid deed on the tax sale cannot be made.

Voters and Elections.

The designation of the office to be filled, which is required by statute to appear on a ballot, is held, in Page *v.* Kuykendall (Ill.) 32 L. R. A. 656, to appear sufficiently when the words "long term" appear after the name of a person at an election held for school directors only, when one is to be chosen for a long term and the other for a vacancy.

Waters.

The apportionment of the flow of a stream by periods of time, rather than by division of its quantity, so that upper and lower proprietors may each have the full flow for designated periods, instead of a portion of the flow all the time, is held, in Wiggins *v.* Muscupiabe Land & W. Co. (Cal.) 32 L. R. A. 667, to be valid as to water used for domestic purposes, as well as that used for irrigation, when the absorption and evaporation of the water would prevent any from reaching the lower proprietor if the flow was divided.

The refusal of a water company to supply water to a tenant in possession and occupancy of a house, when he is ready to pay for it in advance and the company is supplying a city and its inhabitants under a franchise, is held, in State *v.* Butte City Water Co. (Mont.) 32 L. R. A. 697, to be unjustifiable, although a by-law provides that contracts for water will not be made with any persons except owners of property or their authorized agents.

A contract between a town and a waterworks company to purchase the waterworks at a price to be mutually agreed upon, or, on failure to agree, to be fixed by arbitrators, is held, in Bristol *v.* Bristol & W. Waterworks (R. I.) 32 L. R. A. 740, to be enforceable by the court, if the waterworks company refused to agree or to appoint arbitrators, and the agreement to purchase is merely part of another more extensive contract under which the parties have incurred obligations so that they cannot be placed *in statu quo*.

Writs.

Service of process upon a foreign corporation by serving the papers upon an officer who is himself plaintiff in the action or attorney in fact for the plaintiff is held invalid in George *v.* American Ginning Co. (S. C.) 32 L. R. A. 764.

New Books.

"Real Estate Record Guide," to Buyers and Sellers of Real Estate. By George W. Van Siclen. 2d ed. With New York Real Property Law of 1896, Indexed. $. Real Estate Record and Builders' Guide, 14–16 Vesey St., New York.

"Manual for Election Officers and Voters in New York." By F. G. Jewett. Matthew Bender, Albany, N. Y. 1 Vol. $1.50.

"Municipal Bonds." By T. C. Simonton. Banks & Bros., Albany, N. Y. 1 Vol. $5.50.

"Tarriff Law of 1894." Official Indexed Edition. W. H. Lowdermilk & Co., Washington, D. C. Paper $.75.

"Birdseye's Revised Statutes, Codes, and General Laws of New York." 2d Revised Edition. Complete to Jan. 1, 1897. Baker, Voorhis & Co., New York. 3 Vols. $20.

"General Statutes of New Jersey." Frederick D. Linn & Co., Jersey City, N. J. 3 Vols. $18.

The Humorous Side.

THE ENGLISHMAN IS RIGHT.—An English law publication says: "It is not generally known that the talented wife of Mr. McKinley was called to the American bar in the early part of 1893, and that she enjoyed for a long while the distinction of being the only lady of the legal profession who pleaded on behalf of clients before her husband, who was judge of the circuit in which she practices." The Englishman is right. This surprising information is "not generally known." It will be almost as much of a surprise to Americans to learn that Mr. McKinley has been for a long

while judge of a circuit since 1893, as to learn that his wife was called to the American bar in that year.

A LONG STORY SHORT.—The pithy complaint in a Kentucky slander case made out by a justice of the peace is sent us by a correspondent.

Mrs. Rose C. to Mrs. Will P. Dr.	
To use of abusive language in my presence,	$75.
Credit by abusive language,	$45.
Balance,	$30.

It would seem that the complainant herself had not been altogether flannel-mouthed, although her tongue had been worsted.

A "TEAZER."—Referring to a railroad whose operating expenses always exceeded its earnings, an opinion of the United States Supreme Court says: "Counsel say that 'it is familiarly known in Texas as a teazer, and if it ever passes beyond this interesting but unprofitable stage, even its friends will be surprised.' We are not advised, and we can hardly be expected to take judicial notice, of what is meant by the term 'teazer' but it is clearly disclosed by the record that this was an unprofitable road."

HE WOULDN'T DENY IT.—A Federal judge lately charged a jury in a liquor case as follows: "In later years there seems to have been a disposition to deny or ignore judicial knowledge as to what constitutes intoxicating liquors, and the courts have manifested a desire to disavow any judicial knowledge on this subject. At the same time some of the courts have not hesitated to impute to juries an extensive knowledge and information in this regard. This court, however, will follow the precedent established by the decision of Chancellor Walworth upon this subject, and will assume judicial knowledge concerning intoxicating liquors. . . . In a trial in the state of Wisconsin, where this question arose in 1883, the trial judge declared that a man must be almost a driveling idiot who did not know what beer was, and that it was not necessary to prove it to be an intoxicating liquor. Later the supreme court of that state, in passing on the charge of the trial judge, declared that his rulings in the case upon this question were not only clearly correct, but if his peculiar manner gave them force and emphasis it was not only proper but commendable. This court, therefore, will neither stultify itself nor impeach its own veracity by telling you that it has not judicial knowledge that the liquor commonly known as 'whiskey' is an intoxicating liquor or that the drink commonly called a 'whiskey cocktail' is an intoxicating drink."

HE BECAME SORE.—A complaint for personal injuries to a brakeman is said by the Chicago Evening Post to describe them somewhat in detail as follows: "Paralyzed in the left leg and his left hip was thrown and forced out of joint and his spine injured and he was otherwise then and there greatly bruised, hurt, wounded and the bones of his body broken, to wit: The bones of his legs, to wit, the bones of his right leg, the bones of his left leg and the bones of his ankles, to wit, the bones of his right ankle, the bones of his right foot, the bones of his left foot, and the bones of his shoulder joints, to wit, the bones of his right shoulder joint, the bones of his left shoulder joint and the bones of his neck and the bones of his wrists, to wit, the bones of his right wrist, the bones of his left wrist, and the bones of his hands, to wit, the bones of his right hand, the bones of his left hand, and the bones of his back and of his body; and he was permanently injured in the organs of his body, to wit, in his right lung, in his left lung, in his spleen, in his stomach and in his bowels; and he was greatly and permanently injured in his senses, to wit, in the sense of sight, the sense of hearing, the sense of smelling, the sense of feeling and the sense of taste; and he was greatly and permanently injured in his right eye, in his left eye, his right ear, his left ear, his nose, his mouth, his tongue and his fingers and in the power of sensation of his body, and he was greatly and permanently injured in his brain, to wit, the matter of his brain, and in his mind, to wit, his reasoning faculties, his judgment, his imagination and his mental processes; and he became sick, sore, lame, and disordered, and so remained for a long space of time."